

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking on the
Commission's Own Motion into Competition for
Local Exchange Service.

Rulemaking 95-04-043
(Filed April 26, 1995)

Order Instituting Investigation on the
Commission's Own Motion into Competition for
Local Exchange Service.

Investigation 95-04-044
(Filed April 26, 1995)

**ADMINISTRATIVE LAW JUDGE'S RULING
DENYING MOTION FOR MEDIATION**

On June 14, 2002, Cox California Telcom, L.L.C (Cox), filed a motion to solicit and secure the participation of the California Public Utilities Commission (Commission) in resolving a dispute between Cox and SBC Pacific Bell (SBC) relating to the parties' interconnection agreement. The dispute in question relates to transactions under a "Data Exchange Agreement for the Distribution of IntraLATA Message Detail and/or the Settlement of IntraLATA Message Revenue." (DEA.) The DEA was separately negotiated and executed in June 1997 pursuant to the terms of the Interconnection Agreement that was approved by the Commission in Decision (D.) 96-10-040. The DEA provided for the settlement of revenues in reference to the exchange of billing records between the parties relating to certain types of calls or "messages."

Three types of messages were to be exchanged pursuant to the DEA: (1) CATS messages,¹ (2) non-CATS messages, and (3) switched-access messages involving meet-point billing records. Specifically, Cox contends that SBC breached Section 3(A) of the DEA by failing to deliver Cox's "non-CATS" billing records to the appropriate designated billing agent. Cox further contends that SBC breached Section 7 of the DEA by unilaterally modifying the agreement without a writing signed by both parties, thus allowing SBC to transmit Cox's billing information to agents other than those which Cox designated.

Cox claims that because SBC failed to provide Cox's designated billing agent with the appropriate back-up documentation, Cox was not able to bill its own customers for the traffic carried, or to collect fees that would cover the costs for which SBC has billed Cox. Cox has refused to remit payment to SBC in carrying Cox's end-user traffic from April 2000 through July 2001. Cox claims the disputed payments total approximately \$2.25 million. SBC places the disputed payments owed by Cox at "over \$2.7 million."

SBC agrees with Cox in arguing that mediation is necessary to resolve the dispute. SBC denies any breach of contract, arguing that it fully complied with its requirements under the DEA by forwarding Cox's billing media to the agent that Cox had designated.

SBC disputes Cox's claim that it designated two different billing agents for the three types of billing records. SBC also denies that it failed and/or refused to

¹ The acronym "CATS" stands for "Calling Card and Third Number Settlement" which is a mechanized computer process used to maintain records regarding intercompany settlements through which revenues collected by billing companies are distributed to the originating companies. A "non-CATS" message is one that originates, terminates, and bills within the same Bellcore Client Company Territory.

send the appropriate billing records for non-CATS messages to Cox's designated agent(s). SBC provides Attachment 2 to its response, indicating that Cox designated only a single point of contact to receive all of Cox's billing media by transmittal dated August 20, 1997. SBC continued sending billing media to this single point of contact until July 2001 when Cox sent written notice indicating a change of designated point of contact. SBC claims that at no time between August 20, 1997 and July 11, 2001 did Cox ever notify SBC in writing of any other desired change of designated service agent(s).

As such, SBC denies it bears any liability for any portion of the revenues that Cox was unable to collect from Cox end-users due to Cox's alleged failure to designate an agent capable of processing third-party billing records. SBC claims that it is Cox that breached the agreement by refusing to remit full and complete payment for services rendered by SBC between April 2000 and July 2001.

Cox denies that it is liable to SBC for any lost revenues resulting from SBC's alleged breach of the pertinent agreements and alleged failure to transmit to Cox's designated billing agents the billing records for which Cox could have collected revenues to cover the costs of carrying the traffic.

Discussion

Both parties seek mediation services from the Commission, making reference to the terms and conditions of an ancillary interconnection agreement (ICA) between Cox and SBC. Under the cited provisions of the ICA, either party may file a motion for mediation with the Commission to be conducted by an Administrative Law Judge (ALJ). Parties also make reference to D.95-12-056 which prescribed rules governing the establishment of ICAs. (63 CPUC2d 700, 723.) This expedited dispute resolution was to be used "to resolve disputes between parties who cannot reach agreement on the terms of interconnection."

The dispute resolution process was also authorized for “subsequent disputes over breach of contract or interpretation of parties rights and obligations.”

Under the process outlined in D.95-12-056, parties first are to pursue informal resolution without Commission intervention. Cox claims it has exhausted informal resolution efforts. If informal resolution fails, one or more of the parties may file a motion to have the dispute mediated by an ALJ. If mediation fails, the ALJ will direct parties to submit short pleadings and will issue a written ruling setting forth a disposition of the dispute. If a party objects to the ALJ’s ruling, the party may then file a formal complaint under the Commission’s Rules of Practice and Procedure regarding the expedited complaint process set forth in Rule 13.2.

The expedited dispute resolution process adopted in D.95-12-056 was to be used “in the interests of the rapid implementation of interconnection agreements for competitive local exchange service...” In this particular dispute, however, the “rapid implementation” of an interconnection agreement is not at issue. Moreover, although parties mutually allege breach of the contract, there is no disagreement as to the arrangements presently being used for billing and collection of all CATS, non-CATS, and meet-point traffic. Cox agrees that in or about July 2001, the parties identified and corrected the billing data exchange problem, and that the parties have been properly billing and collecting for all pertinent traffic since then. The only dispute relates to who is responsible for the amounts owed for the past period between April 2000 and July 2001 (and associated late fees). In any case, the pendency of this dispute does not preclude Cox from conducting ongoing business operations under the terms of its ICA with SBC.

In view of Commission resource constraints and considering that this dispute relates merely to a question of who owes whom money for a past problem that has since been resolved, the services of an ALJ are not currently available to mediate this dispute. To the extent that parties have already filed pleadings on the substantive merits of their positions, however, a preliminary ruling on the relative merits of parties' claims is hereby given.

Parties' dispute relates essentially to a disagreement over whether SBC properly forwarded Cox's billing messages for non-CATS messages to the designated agent as prescribed by the parties' DEA during the period in question. Behind this dispute is disagreement as to whether Cox had designated two separate billing agents, or only a single agent to receive pertinent non-CATS records during the period in question.

Cox offers no documentary evidence to support its claim that it duly designated more than one billing agent and communicated this fact to SBC prior to July 11, 2001. SBC, on the other hand, offers Attachment 2 that indicates only one billing agent was designated. SBC also offers a second letter (Attachment 3) which is on Cox letterhead and dated July 11, 2001, in which the Cox Operations Manager states: "It has been determined that the daily tapes are going to a Non-Cox facility. We would like to get this corrected as soon as possible." There is no indication in the letter that Cox had previously sent written communication to SBC at an earlier date informing it that non-CATS records were to be forwarded to a different billing agent.

Cox concedes that it didn't even know what the source of the problem was until July 2001, stating: "Despite Pacific's agreement to investigate the discrepancies, it took an additional eight months [from November 2000] for Pacific and Cox to identify the source of the billing problem: Pacific was

conveying the non-CATS billing records to the wrong billing agent.” Thus, although Cox claims there was some previous communication to SBC directing that non-CATS records be forwarded to a second billing agent, Cox didn’t even identify the source of the problem as being related to improper transmission of billing records until July 2001. The billing agent that received the non-CATS records apparently did not inform Cox that it was improperly receiving these records, but merely ignored them. Cox states that: “As the billing agents reviewed the magnetic tapes of billing records, they used what they could and ignored the rest.” (Cox Motion, footnote 4 on page 7.) Assuming there was a designated second billing agent during the period in question, Cox does not explain why the second agent never informed Cox—nor did Cox ascertain—that non-CATS records were not being received for processing and billing up during the entire period in question up until July 2001.

In conclusion, nothing in the pleadings or documentation provided to date supports Cox’s claim that SBC had been notified of a second billing agent prior to July 2001 that was to receive non-CATS records. No basis has been shown to conclude that SBC sent non-CATS records to anyone other than the agent designated by Cox, or that SBC was responsible for the billing errors experienced by Cox during the period in question. No basis has been shown to find SBC in breach of contract, or to relieve Cox from liability for the billings made by SBC.

A possible remaining question is whether SBC bears any responsibility for claimed delays in assisting Cox in identifying and correcting the source of the problem during the period between May 2000 and July 2001, and resulting late charges incurred by Cox as a result. The pleadings do not provide sufficient information to make a definitive conclusion on this question.

In lieu of appointing an ALJ to conduct mediation, this preliminary ruling is issued based on the merits of parties' written pleadings. Given the nature of parties' dispute, and in the interests of moving forward to a final disposition, one or both or the parties should proceed with the next step in the expedited dispute resolution process outlined in D.95-12-056, namely, the filing of an expedited complaint under Rule 13.2.

IT IS RULED that:

1. Considering that the instant dispute relates merely to a question of who owes whom money for a past problem that has since been resolved, the pendency of this dispute does not preclude Cox California Telcom, L.L.C (Cox) from conducting ongoing business operations under its interconnection agreement with SBC Pacific Bell (SBC).

2. In view of the circumstances surrounding the instant dispute, and given California Public Utilities Commission (Commission) resource constraints, services of an Administrative Law Judge (ALJ) are not currently available to mediate the dispute. On this basis, Cox's motion for ALJ mediation is denied.

3. To the extent that parties have already filed pleadings on the substantive merits of their positions, a preliminary ruling on the merits of parties' claims can be given, in lieu of mediation services.

4. Cox's claims that (1) it is not liable for \$2.25 million payments to SBC and (2) claims of breach of contract by SBC are based on the presumption that Cox duly notified SBC that non-CATS billing records were to be forwarded to a second billing agent capable of properly processing such records.

5. Nothing in parties' pleadings or attached documentation supports Cox's claim that SBC had been notified prior to July 2001 of a second designated billing agent prior to July 2001 that was to receive non-CATS records.

6. No basis has been shown to conclude that SBC is liable for losses incurred by Cox in connection with problems in the transmission of non-CATS records to a designated billing agent, or that SBC is in breach of contract.

7. Given the nature of parties' dispute, and in the interests of moving forward to a final disposition of this matter, one or both of the parties should proceed with the next step in the expedited dispute resolution process outlined in D.95-12-056, namely, the filing of an expedited complaint under Rule 13.2.

Dated January 7, 2003, at San Francisco, California.

/s/ THOMAS R. PULSIFER

Thomas R. Pulsifer
Administrative Law Judge

CERTIFICATE OF SERVICE

I certify that I have by mail this day served a true copy of the original attached Administrative Law Judge's Ruling Denying Motion For Mediation on all parties of record in this proceeding or their attorneys of record.

Dated January 7, 2003, at San Francisco, California.

/s/ KRIS KELLER

Kris Keller

N O T I C E

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.

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If specialized accommodations for the disabled are needed, e.g., sign language interpreters, those making the arrangements must call the Public Advisor at (415) 703-2074, TTY 1-866-836-7825 or (415) 703-5282 at least three working days in advance of the event.